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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,449	01/14/2005	Keith Douglas Perring	056222-5067	1532
9629	7590	12/07/2007		
MORGAN LEWIS & BOCKIUS LLP			EXAMINER	
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WASHINGTON, DC 20004				
			ART UNIT	PAPER NUMBER
			1796	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/521,449	PERRING ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 April 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
  - 4a) Of the above claim(s) 5-10 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-10 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>1/14/05</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

1. Claims 1-10 are pending. The preliminary amendment filed 4/4/06 has been entered. Note that, for purposes of examination, "use of" claims 5 and 6 have been interpreted as method of use claims. Further, the Examiner asserts that claims 1 and 4 are drawn to a one component composition which simply requires the existence of a particular perfume compound.

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, drawn to perfume composition.

Group II, claim(s) 5-10, drawn to a method of using a perfume composition in a method for reducing or preventing body malodor by topically applying to human skin.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 1, at least, is anticipated by or obvious over WO99/18926, WO96/30470, or Peterson et al (US 5,861,146). Consequently, the special technical feature which links claims 1-10, a perfume composition, does not provide a contribution over the prior art, so unity of invention is lacking.

During a telephone conversation with Paul Kokulis on November 29, 2007, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 5-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/30470, WO99/18926, or Peterson et al (US 5,861,146).

'470 teaches the use of N-ethyl-N-(3-methylphenyl)propionamide for imparting useful fragrance properties to fragrance compositions and to fragranced products. See Abstract. The amide may be used in fragrance compositions in an amount of up to about 80% by weight. See page 5, lines 20-30. '470 discloses the claimed invention with sufficient specificity to constitute anticipation.

'926 teaches a perfume composition which gives good deposition and/or substantially improved deodorant effectiveness on textiles incorporating spandex fibres. The perfume comprises a mixture of fragrance materials in which at least 60% by weight of the composition comprises fragrance materials drawn from categories I and II. See Abstract. Suitable fragrance materials which fall under category II include cis-jasmone, etc. See page 17, lines 1-40. '926 discloses the claimed invention with sufficient specificity to constitute anticipation.

Peterson et al teach methods of reducing body and/or vaginal odor comprising the application of a perfumed powder compositions comprising from about 0.1% to about 25% by weight of the composition, of uncomplexed cyclodextrin; a perfume composition selected from the group consisting of from about 0.05% to about 15%, by weight of the odor absorbing composition, of an encapsulated perfume, and from about 0.01% to about 5% by weight of the odor absorbing composition of a free perfume, and mixtures thereof; and a powder carrier. See Abstract. Preferably, the encapsulated perfume, whatever form it takes, is composed of perfume ingredients selected

predominantly from two groups of ingredients, namely volatile perfume ingredients and ingredients having significant low odor detection threshold, and mixtures thereof.

Typically, at least about 50%, preferably at least about 80% by weight of the encapsulated perfume is composed of perfume ingredients of these two groups.

Suitable volatile perfume ingredients include cuminic aldehyde, octyl acetate, etc. See column 5, line 5 to column 6, line 27. Additionally, there are also volatile ingredients that have a significantly low odor detection threshold which are useful including allyl amyl glycolate, etc. See column 7, lines 7-20. Peterson et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '926, '470, and Peterson et al anticipate the material limitations of the instant claims.

Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Perring et al (US 6,780,835).

Perring et al teach a perfume composition which gives good deposition and/or substantially improved deodorant effectiveness on textiles incorporating spandex fibres. The perfume comprises a mixture of fragrance materials in which at least 60% by weight of the composition comprises fragrance materials drawn from categories I and II. See Abstract. Suitable fragrance materials which fall under category II include cis-jasmone, etc. See column 6, lines 40-69. Perring et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Perring et al anticipate the material limitations of the instant claims.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al (US 5,861,146).

Peterson et al are relied upon as set forth above. However, Peterson et al do not teach, with sufficient specificity, a perfume composition containing a mixture of perfume ingredients such as cuminic aldehyde, octyl acetate, and allyl amyl glycolate in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a perfume composition containing a mixture of perfume ingredients such as cuminic aldehyde, octyl acetate, and allyl amyl glycolate in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Peterson et al suggest a perfume composition containing a mixture of perfume ingredients such as cuminic aldehyde, octyl acetate, and allyl amyl glycolate in the specific amounts as recited by the instant claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,780,835. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-11 of US 6,780,835 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a perfume composition containing a perfume such as cis-jamone in the specific amounts as recited by the instant claims, with a reasonable expectation of success, because claims 1-11 of US 6,780,835 suggest a perfume composition containing a perfume such as cis-jamone in the specific amounts as recited by the instant claims.

Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3-6 of copending Application No. 10/521432. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 3-6 of 10/521432 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a perfume composition containing a mixture of perfume ingredients such as cuminic aldehyde, citronellal, and allyl amyl glycolate in the

specific amounts as recited by the instant claims, with a reasonable expectation of success, because claims 3-6 of 10/521432 suggest a perfume composition containing a mixture of perfume ingredients such as cuminic aldehyde, citronellal, and allyl amyly glycolate in the specific amounts as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1796

GRD  
December 3, 2007